

By the Committee on Judiciary and Senator Dudley

308-2082-98

1 A bill to be entitled
2 An act relating to liens; amending s. 255.05,
3 F.S.; revising provisions pertaining to the
4 bond of a contractor constructing public
5 buildings; providing for revised time periods
6 for certain claims; revising forms for waiver
7 of right to claim against bond; providing for
8 written statements to the contractor with
9 respect to the nature of labor or services
10 performed in certain circumstances; providing
11 for the maintenance of actions in law and in
12 equity for breach of contract on public works
13 projects; amending s. 713.01, F.S.; redefining
14 the terms "improve," "improvement,"
15 "subcontractor," and "sub-subcontractor" to
16 include reference to solid-waste removal;
17 amending s. 713.06, F.S.; revising provisions
18 relating to contractor's affidavit; amending s.
19 713.132, F.S.; revising requirements pertaining
20 to service of notice of termination; amending
21 s. 713.18, F.S.; revising requirements
22 pertaining to service of documents; amending s.
23 713.23, F.S.; amending the timeframe within
24 which certain actions to enforce a claim
25 against the payment bond may commence;
26 providing a form; creating s. 713.235, F.S.;
27 providing for waivers of right to claim against
28 a payment bond; providing forms; amending s.
29 713.24, F.S.; revising the process for
30 transferring liens to security; providing an
31 effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2
3 Section 1. Paragraph (a) of subsection (1) and
4 paragraphs (a), (b), and (c) of subsection (2) of section
5 255.05, Florida Statutes, are amended, and subsections (8) and
6 (9) are added to that section, to read:

7 255.05 Bond of contractor constructing public
8 buildings; form; action by materialmen.--

9 (1)(a) Any person entering into a formal contract with
10 the state or any county, city, or political subdivision
11 thereof, or other public authority, for the construction of a
12 public building, for the prosecution and completion of a
13 public work, or for repairs upon a public building or public
14 work shall be required, before commencing the work or before
15 recommencing the work after a default or abandonment, to
16 execute, deliver to the public owner, and record in the public
17 records of the county where the improvement is located, a
18 payment and performance bond with a surety insurer authorized
19 to do business in this state as surety. The bond must state on
20 its front page:the name, and principal business address, and
21 phone number of the contractor, the surety, the owner of the
22 property being improved, and, if different from the owner, the
23 contracting public entity; the contract number assigned by the
24 contracting public entity; and ~~of both the principal and the~~
25 ~~surety and must contain~~ a description of the project
26 sufficient to identify it, including, if applicable, a legal
27 description and the street address of the property being
28 improved, and a general description of the improvement. Such
29 bond shall be conditioned that the contractor perform the
30 contract in the time and manner prescribed in the contract and
31 promptly make payments to all persons defined in s. 713.01

1 whose claims derive directly or indirectly from the
2 prosecution of the work provided for in the contract. Any
3 claimant may apply to the governmental entity having charge of
4 the work for copies of the contract and bond and shall
5 thereupon be furnished with a certified copy of the contract
6 and bond. The claimant shall have a right of action against
7 the contractor and surety for the amount due him or her,
8 including unpaid finance charges due under the claimant's
9 contract. Such action shall not involve the public authority
10 in any expense. When such work is done for the state and the
11 contract is for \$100,000 or less, no payment and performance
12 bond shall be required. At the discretion of the official or
13 board awarding such contract when such work is done for any
14 county, city, political subdivision, or public authority, any
15 person entering into such a contract which is for \$200,000 or
16 less may be exempted from executing the payment and
17 performance bond. When such work is done for the state, the
18 director of the Department of Management Services may delegate
19 to state agencies the authority to exempt any person entering
20 into such a contract amounting to more than \$100,000 but less
21 than \$200,000 from executing the payment and performance bond.
22 In the event such exemption is granted, the officer or
23 officials shall not be personally liable to persons suffering
24 loss because of granting such exemption. The Department of
25 Management Services shall maintain information on the number
26 of requests by state agencies for delegation of authority to
27 waive the bond requirements by agency and project number and
28 whether any request for delegation was denied and the
29 justification for the denial.

30 (2)(a)1. A contractor or the contractor's agent or
31 attorney may elect to shorten the prescribed time in this

1 paragraph within which an action to enforce any claim against
2 a payment bond provided pursuant to this section may be
3 commenced by recording in the clerk's office a notice in
4 substantially the following form:

5
6 NOTICE OF CONTEST OF CLAIM AGAINST PAYMENT BOND

7 To: ...(Name and address of claimant)...

8 You are notified that the undersigned contests your
9 notice of nonpayment, dated,, and served
10 on the undersigned on,, and that the
11 time within which you may file suit to enforce your claim is
12 limited to 60 days after the date of service of this notice.

13
14 DATED on,

15
16 Signed:...(Contractor or Attorney)...

17
18 The claim of any claimant upon whom such notice is served and
19 who fails to institute a suit to enforce his or her claim
20 against the payment bond within 60 days after service of such
21 notice shall be extinguished automatically. The clerk shall
22 mail a copy of the notice of contest to the claimant at the
23 address shown in the notice of nonpayment or most recent
24 amendment thereto and shall certify to such service on the
25 face of such notice and record the notice. Service is complete
26 upon mailing.

27 2. A claimant, except a laborer, who is not in privity
28 with the contractor shall, before commencing or not later than
29 45 days after commencing to furnish labor, materials, or
30 supplies for the prosecution of the work, furnish the
31 contractor with a notice that he or she intends to look to the

1 bond for protection. A claimant who is not in privity with the
2 contractor and who has not received payment for his or her
3 labor, materials, or supplies shall deliver to the contractor
4 and to the surety written notice of the performance of the
5 labor or delivery of the materials or supplies and of the
6 nonpayment. The notice of nonpayment may be served at any time
7 during the progress of the work or thereafter but not before
8 45 days after the first furnishing of labor, services, or
9 materials, and not later than 90 days after the final
10 furnishing of the labor, services, or materials by the
11 claimant or, with respect to rental equipment, not later than
12 90 days after the date that the rental equipment was last on
13 the job site available for use. No action for the labor,
14 materials, or supplies may be instituted against the
15 contractor or the surety unless both notices have been given.
16 An ~~No~~ action, except for an action exclusively for recovery of
17 retainage, must ~~shall~~ be instituted against the contractor or
18 the surety on the payment bond or the payment provisions of a
19 combined payment and performance bond ~~within~~ after 1 year
20 ~~after~~ from the performance of the labor or completion of
21 delivery of the materials or supplies. An action exclusively
22 for recovery of retainage must be instituted against the
23 contractor or the surety within 1 year after the performance
24 of the labor or completion of delivery of the materials or
25 supplies, or within 90 days after the contractor's receipt of
26 final payment (or the payment estimate containing the owner's
27 final reconciliation of quantities if no further payment is
28 earned and due as a result of deductive adjustments) by the
29 contractor or surety, whichever comes last.A claimant may not
30 waive in advance his or her right to bring an action under the
31 bond against the surety. In any action brought to enforce a

1 claim against a payment bond under this section, the
2 prevailing party is entitled to recover a reasonable fee for
3 the services of his or her attorney for trial and appeal or
4 for arbitration, in an amount to be determined by the court,
5 which fee must be taxed as part of the prevailing party's
6 costs, as allowed in equitable actions.

7 (b) When a person is required to execute a waiver of
8 his or her right to make a claim against the payment bond in
9 exchange for, or to induce payment of, a progress payment, the
10 waiver may be in substantially the following form:

11
12 WAIVER OF RIGHT TO CLAIM
13 AGAINST THE PAYMENT BOND
14 (PROGRESS PAYMENT)
15

16 The undersigned, in consideration of the sum of \$....,
17 hereby waives its right to claim against the payment bond for
18 labor, services, or materials furnished through ...(insert
19 date)... to ...(insert the name of your customer)... on the
20 job of ...(insert the name of the owner)..., for improvements
21 to the following described project:

22
23 (description of project)
24

25 This waiver does not cover any retention or any labor,
26 services, or materials furnished after the date specified.

27
28 DATED ON, 19....

29 ... (Claimant)...

30 By:.....
31

1 (c) When a person is required to execute a waiver of
2 his or her right to make a claim against the payment bond, in
3 exchange for, or to induce payment of, the final payment, the
4 waiver may be in substantially the following form:

5
6 WAIVER OF RIGHT TO CLAIM
7 AGAINST THE PAYMENT BOND (FINAL PAYMENT)
8

9 The undersigned, in consideration of the final payment
10 in the amount of \$...., hereby waives its right to claim
11 against the payment bond for labor, services, or materials
12 furnished to ...(insert the name of your customer)... on the
13 job of ...(insert the name of the owner)..., for improvements
14 to the following described project:

15
16 (description of project)
17

18 DATED ON, 19....

19 ...(Claimant)...

20 By:.....
21

22 (8) When a contractor has furnished a payment bond
23 pursuant to this section, he or she may, when the state,
24 county, municipality, political subdivision, or other public
25 authority makes any payment to the contractor or directly to a
26 claimant, serve a written demand on any other claimant for a
27 written statement under oath of his or her account showing the
28 nature of the labor or services performed and to be performed,
29 if any; the materials furnished; the materials to be
30 furnished, if known; the amount paid on account to date; the
31 amount due; and the amount to become due, if known, as of the

1 date of the statement by the claimant. Any such demand to a
2 claimant must be served on the claimant at the address and to
3 the attention of any person who is designated to receive the
4 demand in the notice to contractor served by the claimant. The
5 failure or refusal to furnish the statement does not deprive
6 the claimant of his or her rights under the bond if the demand
7 is not served at the address of the claimant or directed to
8 the attention of the person designated to receive the demand
9 in the notice to contractor. The failure to furnish the
10 statement within 30 days after the demand, or the furnishing
11 of a false or fraudulent statement, deprives the claimant who
12 fails to furnish the statement, or who furnishes the false or
13 fraudulent statement, of his or her rights under the bond. If
14 the contractor serves more than one demand for statement of
15 account on a claimant and none of the information regarding
16 the account has changed since the claimants last response to a
17 demand, the failure or refusal to furnish such statement does
18 not deprive the claimant of his or her rights under the bond.
19 The negligent inclusion or omission of any information
20 deprives the claimant of his or her rights under the bond to
21 the extent that the contractor can demonstrate prejudice from
22 such act or omission by the claimant. The failure to furnish a
23 response to a demand for statement of account does not affect
24 the validity of any claim on the bond being enforced in a
25 lawsuit filed before the date the demand for statement of
26 account is received by the claimant.

27 (9) On any public works project on which the public
28 authority requires a performance and payment bond, suits at
29 law and in equity may be brought and maintained by and against
30 the public authority on any contract claim arising from breach
31 of an express or implied provision of a written agreement or a

1 written directive issued by the public authority pursuant to
2 the written agreement. In any such suit, the public authority
3 and the contractor shall have all of the same rights,
4 obligations, remedies, and defenses as a private person under
5 a like contract, except that no liability may be based on an
6 oral modification of the written contract or written
7 directive. Notwithstanding anything to the contrary contained
8 herein, no employee or agent of the public authority may be
9 held personally liable to an extent greater than that pursuant
10 to s. 768.28, and no suit sounding in tort shall be maintained
11 against the public authority.

12 Section 2. Subsections (12), (13), (26), and (27) of
13 section 713.01, Florida Statutes, are amended to read:

14 713.01 Definitions.--As used in this part, the term:

15 (12) "Improve" means build, erect, place, make, alter,
16 remove, repair, or demolish any improvement over, upon,
17 connected with, or beneath the surface of real property, or
18 excavate any land, or furnish materials for any of these
19 purposes, or perform any labor or services upon the
20 improvements, including the furnishing of carpet or rugs or
21 appliances that are permanently affixed to the real property
22 and final construction cleanup to prepare a structure for
23 occupancy; or perform any labor or services or furnish any
24 materials in grading, seeding, sodding, or planting for
25 landscaping purposes, including the furnishing of trees,
26 shrubs, bushes, or plants that are planted on the real
27 property, or in equipping any improvement with fixtures or
28 permanent apparatus or provide any solid-waste collection or
29 disposal on the site of the improvement.

30 (13) "Improvement" means any building, structure,
31 construction, demolition, excavation, solid-waste removal,

1 landscaping, or any part thereof existing, built, erected,
2 placed, made, or done on land or other real property for its
3 permanent benefit.

4 (26) "Subcontractor" means a person other than a
5 materialman or laborer who enters into a contract with a
6 contractor for the performance of any part of such
7 contractor's contract, including the removal of solid waste
8 from the real property.

9 (27) "Sub-subcontractor" means a person other than a
10 materialman or laborer who enters into a contract with a
11 subcontractor for the performance of any part of such
12 subcontractor's contract, including the removal of solid waste
13 from the real property.

14 Section 3. Paragraph (a) of subsection (2), and
15 paragraph (d) of subsection (3) of section 713.06, Florida
16 Statutes, are amended to read:

17 713.06 Liens of persons not in privity; proper
18 payments.--

19 (2)(a) All lienors under this section, except
20 laborers, as a prerequisite to perfecting a lien under this
21 chapter and recording a claim of lien, must serve a notice on
22 the owner setting forth the lienor's name and address, a
23 description sufficient for identification of the real
24 property, and the nature of the services or materials
25 furnished or to be furnished. A sub-subcontractor or a
26 materialman to a subcontractor must serve a copy of the notice
27 on the contractor as a prerequisite to perfecting a lien under
28 this chapter and recording a claim of lien. A materialman to a
29 sub-subcontractor must serve a copy of the notice to owner on
30 the contractor as a prerequisite to perfecting a lien under
31 this chapter and recording a claim of lien. A materialman to a

1 sub-subcontractor shall serve the notice to owner on the
2 subcontractor if the materialman knows the name and address of
3 the subcontractor. The notice must be served before
4 commencing, or not later than 45 days after commencing, to
5 furnish his or her labor, services, or materials, but, in any
6 event, before the date of the owner's disbursement of the
7 final payment after the contractor has furnished the affidavit
8 under subparagraph (3)(d)1. The notice must be served
9 regardless of the method of payments by the owner, whether
10 proper or improper, and does not give to the lienor serving
11 the notice any priority over other lienors in the same
12 category; and the failure to serve the notice, or to timely
13 serve it, is a complete defense to enforcement of a lien by
14 any person. The serving of the notice does not dispense with
15 recording the claim of lien. The notice is not a lien, cloud,
16 or encumbrance on the real property nor actual or constructive
17 notice of any of them.

18 (3) The owner may make proper payments on the direct
19 contract as to lienors under this section, in the following
20 manner:

21 (d) When the final payment under a direct contract
22 becomes due the contractor:

23 1. The contractor shall give to the owner an affidavit
24 stating, if that be the fact, that all lienors under his or
25 her direct contract who have timely served a notice to owner
26 on the owner and the contractor have been paid in full or, if
27 the fact be otherwise, showing the name of each such lienor
28 who has not been paid in full and the amount due or to become
29 due each for labor, services, or materials furnished. The
30 contractor shall have no lien or right of action against the
31 owner for labor, services, or materials furnished under the

1 direct contract while in default for not giving the owner the
2 affidavit; however, the negligent inclusion or omission of any
3 information in the affidavit which has not prejudiced the
4 owner does not constitute a default that operates to defeat an
5 otherwise valid lien. The contractor shall execute the
6 affidavit and deliver it to the owner at least 5 days before
7 instituting an action as a prerequisite to the institution of
8 any action to enforce his or her lien under this chapter, even
9 if the final payment has not become due because the contract
10 is terminated for a reason other than completion and
11 regardless of whether the contractor has any lienors working
12 under him or her or not.

13 2. If the contractor's affidavit required in this
14 subsection recites any outstanding bills for labor, services,
15 or materials, the owner may, after giving the contractor at
16 least 10 days' written notice, pay such bills in full direct
17 to the person or firm to which they are due, if the balance
18 due on a direct contract at the time the affidavit is given is
19 sufficient to pay them and lienors giving notice, and shall
20 deduct the amounts so paid from the balance due the
21 contractor. Lienors listed in said affidavit not giving
22 notice, whose 45-day notice time has not expired, shall be
23 paid in full or pro rata, as appropriate, from any balance
24 then remaining due the contractor; but no lienor whose notice
25 time has expired shall be paid by the owner or by any other
26 person except the person with whom that lienor has a contract.

27 3. If the balance due is not sufficient to pay in full
28 all lienors listed in the affidavit and entitled to payment
29 from the owner under this part and other lienors giving
30 notice, the owner shall pay no money to anyone until such time
31 as the contractor has furnished him or her with the

1 difference; however, if the contractor fails to furnish the
2 difference within 10 days from delivery of the affidavit or
3 notice from the owner to the contractor to furnish the
4 affidavit, the owner shall determine the amount due each
5 lienor and shall disburse to them the amounts due from him or
6 her on a direct contract in accordance with the procedure
7 established by subsection (4).

8 4. The owner shall have the right to rely on the
9 contractor's affidavit given under this paragraph in making
10 the final payment, unless there are lienors giving notice who
11 are not listed in the affidavit. If there are lienors giving
12 notice who are not so listed, the owner may pay such lienors
13 and any persons listed in the affidavit that are entitled to
14 be paid by the owner under subparagraph (d)2. and shall
15 thereupon be discharged of any further responsibility under
16 the direct contract, except for any balance that may be due to
17 the contractor.

18 5. The owner shall retain the final payment due under
19 the direct contract that shall not be disbursed until the
20 contractor's affidavit under subparagraph (d)1. has been
21 furnished to the owner.

22 6. When final payment has become due to the contractor
23 and the owner fails to withhold as required by subparagraph
24 (d)5., the property improved shall be subject to the full
25 amount of all valid liens of which the owner has notice at the
26 time the contractor furnishes his or her affidavit.

27 Section 4. Subsection (1) of section 713.132, Florida
28 Statutes, is amended to read:

29 713.132 Notice of termination.--
30
31

1 (1) An owner may terminate the period of effectiveness
2 of a notice of commencement by executing, swearing to, and
3 recording a notice of termination that contains:

4 (a) The same information as the notice of
5 commencement;

6 (b) The recording office document book and page
7 reference numbers and date of the notice of commencement;

8 (c) A statement of the date as of which the notice of
9 commencement is terminated, which date may not be earlier than
10 30 days after the notice of termination is recorded;

11 (d) A statement specifying that the notice applies to
12 all the real property subject to the notice of commencement or
13 specifying the portion of such real property to which it
14 applies;

15 (e) A statement that all lienors have been paid in
16 full; and

17 (f) A statement that the owner has, before recording
18 the notice of termination, served a copy of the notice of
19 termination on the contractor and on each lienor who has given
20 notice. The owner is not required to serve a copy of the
21 notice of termination on any lienor who has executed a waiver
22 and release of lien upon final payment in accordance with s.
23 713.20.

24 Section 5. Section 713.18, Florida Statutes, is
25 amended to read:

26 713.18 Manner of serving notices and other
27 instruments.--

28 (1) Service of notices, claims of lien, affidavits,
29 assignments, and other instruments permitted or required under
30 this part, or copies thereof when so permitted or required,
31

1 unless otherwise specifically provided in this part, must be
2 made by one of the following methods:

3 (a) By actual delivery to the person to be served; or,
4 if a partnership, to one of the partners; or, if a
5 corporation, to an officer, director, managing agent, or
6 business agent thereof.

7 (b) By mailing the same, postage prepaid, by
8 registered or certified mail to the person to be served at her
9 or his last known address and evidence of delivery. If a
10 notice to owner is mailed pursuant to this paragraph within 40
11 days after the date the lienor first furnishes labor,
12 services, or materials, service of that notice is effective as
13 of the date of mailing if the person who served the notice
14 maintains a registered or certified mail log that shows the
15 date the notice was served, the registered or certified mail
16 number issued by the United States Postal Service, the name
17 and address of the person served, and the date stamp of the
18 United States Postal Service confirming the date of mailing.
19 If an instrument served pursuant to this paragraph ~~by this~~
20 ~~method~~ to the last address shown in the notice of commencement
21 or any amendment thereto or, in the absence of a notice of
22 commencement, to the last address shown in the building permit
23 application is not received, but is returned by the United
24 States Postal Service as being "refused," "moved, not
25 forwardable," or "unclaimed," or is otherwise not delivered or
26 deliverable through no fault of the person serving the item,
27 then service is effective as of the date of mailing.

28 (c) If neither of the foregoing methods can be
29 accomplished, by posting on the premises.

30 (2) If the real property is owned by more than one
31 person, a lienor may serve any notices or other papers under

1 this part on any one of such owners, and such notice is deemed
2 notice to all owners.

3 (3) Service of notices or copies thereof, permitted or
4 required under this part, may be made by facsimile
5 transmission when the person being served has listed that
6 person's facsimile phone number in the Notice of Commencement.
7 ~~The owner must be served with the Notice to Owner in the~~
8 ~~manner specified in subsection (2) of this section.~~ The
9 lienor's facsimile confirmation sheet with the correct
10 facsimile phone number shall be proof of the date and time the
11 notice was served.

12 Section 6. Paragraph (e) of subsection (1) of section
13 713.23, Florida Statutes, is amended to read:

14 713.23 Payment bond.--

15 (1)

16 (e) No action for the labor or materials or supplies
17 may be instituted or prosecuted against the contractor or
18 surety unless both notices have been given. No action shall
19 be instituted or prosecuted against the contractor or against
20 the surety on the bond under this section after 1 year from
21 the performance of the labor or completion of delivery of the
22 materials and supplies. A contractor or the contractor's agent
23 or attorney may elect to shorten the prescribed time within
24 which an action to enforce any claim against a payment bond
25 provided pursuant to this section or s. 713.245 may be
26 commenced by recording in the clerk's office a notice in
27 substantially the following form:

28 NOTICE OF CONTEST OF CLAIM AGAINST PAYMENT BOND

29

30 To: (Name and address of lienor).....

31

1 You are notified that the undersigned contests your
2 notice of nonpayment, dated,, and served on the
3 undersigned on,, and that the time within which
4 you may file suit to enforce your claim is limited to 60 days
5 from the date of service of this notice.

6
7 DATED on,

8
9 Signed: ... (Contractor or Attorney)...

10
11 The claim of any lienor upon whom such notice is served and
12 who fails to institute a suit to enforce his or her claim
13 against the payment bond within 60 days after service of such
14 notice shall be extinguished automatically. The clerk shall
15 mail a copy of the notice of contest to the lienor at the
16 address shown in the notice of nonpayment or most recent
17 amendment thereto and shall certify to such service on the
18 face of such notice and record the notice. Service is complete
19 upon mailing.

20 Section 7. Section 713.235, Florida Statutes, is
21 created to read:

22 713.235 Waivers of right to claim against payment
23 bond; forms.--

24 (1) When a person is required to execute a waiver of
25 his or her right to make a claim against a payment bond
26 provided pursuant to s. 713.23 or s. 713.245, in exchange for,
27 or to induce payment of, a progress payment, the waiver may be
28 in substantially the following form:

29 WAIVER OF RIGHT TO CLAIM
30 AGAINST THE PAYMENT BOND
31 (PROGRESS PAYMENT)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

DATED on

.....(Lienor).....

By:.....

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(4) A person who executes a waiver in exchange for a check may condition the waiver on payment of the check.

(5) A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms.

Section 8. Section 713.24, Florida Statutes, is amended to read:

713.24 Transfer of liens to security.--

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state,

either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, ~~\$500~~ to apply on any attorney's fees and court costs that ~~which~~ may be taxed in any

1 proceeding to enforce said lien. Such deposit or bond shall be
2 conditioned to pay any judgment or decree which may be
3 rendered for the satisfaction of the lien for which such claim
4 of lien was recorded. Upon making such deposit or filing such
5 bond, the clerk shall make and record a certificate showing
6 the transfer of the lien from the real property to the
7 security and shall mail a copy thereof by registered or
8 certified mail to the lienor named in the claim of lien so
9 transferred, at the address stated therein. Upon filing the
10 certificate of transfer, the real property shall thereupon be
11 released from the lien claimed, and such lien shall be
12 transferred to said security. In the absence of allegations of
13 privity between the lienor and the owner, and subject to any
14 order of the court increasing the amount required for the lien
15 transfer deposit or bond, no other judgment or decree to pay
16 money may be entered by the court against the owner.The clerk
17 shall be entitled to a fee for making and serving the
18 certificate, in the sum of \$10. If the transaction involves
19 the transfer of multiple liens, an additional charge of \$5 for
20 each additional lien shall be charged. For recording the
21 certificate and approving the bond, the clerk shall receive
22 her or his usual statutory service charges as prescribed in s.
23 28.24. Any number of liens may be transferred to one such
24 security.

25 (2) Any excess of the security over the aggregate
26 amount of any judgments or decrees rendered plus costs
27 actually taxed shall be repaid to the party filing the same or
28 her or his successor in interest. Any deposit of money shall
29 be considered as paid into court and shall be subject to the
30 provisions of law relative to payments of money into court and
31 the disposition of same.

1 (3) Any party having an interest in such security or
2 the property from which the lien was transferred may at any
3 time, and any number of times, file a complaint in chancery in
4 the circuit court of the county where such security is
5 deposited, or file a motion in a pending action to enforce a
6 lien, for an order to require additional security, reduction
7 of security, change or substitution of sureties, payment of
8 discharge thereof, or any other matter affecting said
9 security. If the court finds that the amount of the deposit or
10 bond in excess of the amount claimed in the claim of lien is
11 insufficient to pay the lienor's attorney's fees and court
12 costs incurred in the action to enforce the lien, the court
13 must increase the amount of the cash deposit or lien transfer
14 bond.

15 (4) If a ~~no~~ proceeding to enforce a transferred lien
16 is not ~~shall be~~ commenced within the time specified in s.
17 713.22 or if it appears that the transferred lien has been
18 satisfied of record, the clerk shall return said security upon
19 request of the person depositing or filing the same, or the
20 insurer.

21 Section 9. This act shall take effect July 1, 1998.
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1466

4 The Committee Substitute for Senate Bill 1466:

- 5 - Provides that on any public works project on which a
6 performance bond is required, suits may be brought at law
7 or in equity by or against the public authority on any
8 contract claim arising from breach of an express or
9 implied provision of a written agreement or a written
10 directive issued by the public authority pursuant to the
11 written agreement. In such a suit, the public authority
12 and the contractor have all of the same rights,
13 obligations, remedies, and defenses as a private person
14 under a like contract, except that no liability may be
15 based on an oral modification of the written contract or
16 written directive.
- 17 - Includes the collection or disposal of solid waste in the
18 construction lien law as an improvement to the real
19 property.
- 20 - Deletes provisions entitling a contractor who furnishes a
21 bond and follows the proper payment procedure set forth
22 in s. 713.06, F.S., to the proper payment defenses for
23 the property owner set forth in that section.
- 24 - Deletes provisions allowing a contractor to demand a
25 statement of accounts from lienors.
- 26 - Provides for attorney's fees in actions to enforce a lien
27 which has been transferred to other security and requires
28 a monetary deposit or bond to secure payment of such
29 fees.
30
31